PUBLIC PROSECUTOR v. ABDUL RAHMAN

[A. Cr. J. (Smith J.) July 20, 1957]

[Seremban — Criminal Appeal No. 4 of 1957]

Police — Discipline — Special constable — Absence from duty — Police Ordinance, 1952, s. 75(1) — "Desertion" — Essential (Special Constabulary) Regulations 1948 — Interpretation and General Clauses Ordinance, 1948, s. 12.

The accused in this case pleaded guilty to the following charge: "That you between 8.05 a.m. 1.12.56 and 8.05 a.m. 22.12.56 being a Police Officer to wit SC. 24436 appointed under the Special Constabulary Regulations 1948 G.N. 1694/48 at Police Station, Johol, did absent yourself from duty under circumstances which show that you had no intention of returning to duty and that you are thereby deemed to have deserted the Police force under section 75(i) of the Police Ordinance 14/52." The learned Magistrate refused to accept his plea on the ground that the charge did not disclose an offence and acquitted the accused. Against this acquittal the Public Prosecutor has appealed.

Held: (1) a Special Constable who absents himself from duty under circumstances which show that he has no intention of returning to duty is not guilty of the offence of desertion under section 75 of the Police Force Ordinance, 1952;

(2) regulation 8(2) of the Essential (Special Constabulary) Regulations 1948 provides that in all matters concerning discipline the Police Force Enactment (F.M.S. Cap. 34) shall apply to the Special Constabulary throughout the Federation. That Enactment has been replaced by the Police Force Ordinance 1952 which has created the offence of desertion which was unknown to the Enactment and which does not come under that part of the Ordinance which deals with discipline. Therefore the offence of desertion, not being a re-enacted provision for the purposes of section 12 of the Interpretation and General Clauses Ordinance, 1948, cannot apply to Special Constables without an express provision therefor in the Police Force Ordinance, 1952.

MAGISTRATE'S CRIMINAL APPEAL.

L. A. Massie (Federal Counsel) for the appellant.

Respondent in person.

Smith J. : — The accused was charged before the Magistrate's Court upon the following charge to which he pleaded guilty :—

"That you between 8.05 a.m. 1.12.56 and 8.05 a.m. 22.12.56 being a Police Officer to wit SC. 24436 appointed under the Special Constabulary Regulations 1948 G.N. 1694/48 at Police Station, Johol, did absent yourself from duty under circumstances which show that you had no intention of returning to duty and that you are thereby deemed to have deserted the Police Force and thereby committed an offence under Section 75(1) of the Police Ordinance 14/52."

The learned Magistrate refused to accept his plea on the ground that the charge did not disclose an offence and acquitted the accused. Against that acquittal the Public Prosecutor has appealed.

I agree with the learned Magistrate that an offence was not disclosed, though I do not entirely agree with the reasons which he gave.

The first point which the learned Magistrate made is that the accused is not a police officer within the meaning of section 2 of the Police Ordinance, 1952, since he is not a member of the Federation of Malaya Police Force established under the Ordinance: see definitions of "police officer" and "the force" in section 2 of the Ordinance. He is a "special police officer" under the Essential (Special Constabulary) Regulations, 1948 (G.N. 1694/48). Any offence which he commits in that capacity is an offence against those Regulations and in certain instances the offence is punishable with the punishment provided under another written law.

The learned Magistrate has expressed the opinion that these Regulations have been repealed by the Emergency (Auxiliary Police) Regulations, 1948 (G.N. 2067/48). This is not the case: regulation 9(2) of these latter regulations repealed the Essential (Special Constables) Regulations, 1948 (G.N. 1548/48). The Essential (Special Constabulary) Regulations, 1948, are unrepealed and still in force.

Regulation 8(2) of the Essential (Special Constabulary) Regulations, 1948, reads as follows :—

"8. (2) In all matters concerning discipline and administration the provisions of the Police Force Enactment of the Federated Malay States shall have effect and apply to the Special Constabulary throughout the Federation."

The Federated Malay States Police Force Enactment (F.M.S. Cap. 34) has been repealed by the Police Ordinance, 1952. This latter written law repeals and re-enacts, with certain modifications, most of the provisions of the Federated Malay States Enactment. Consequently, references to the Federated Malay States Enactment must now be construed as references to the Police Ordinance, 1952.

It is necessary to find what are the parts of the Police Ordinance, 1952, which deal with administration and discipline. It is clear that Part II — Constitution and Administration — contains sections which are applicable to administration and are therefore binding on special police officers. Equally binding are the provisions of Part VII — Discipline. The more difficult question is to decide whether the provisions in Part XI — General Offences and Penalties — which relate peculiarly to police officers can be considered as matters of discipline and applied to special police officers.

The first point to note is that the offence of desertion was unknown to the Federated Malay States Enactment. The part of that Enactment which dealt with discipline was sections 26 — 33 under the general heading "Discipline and Duties". This provided for the offence of absence without leave being dealt with by a senior police officer or, in more serious cases, by a Magistrate — see sections 27 and 28.

The Police Force Ordinance, 1952, created an entirely new offence of desertion in section 75. This section is in a part headed — "General Offences and Penalties" — and mingles (i) offences which can be

committed only by police officers, (ii) offences which can be committed by any person whether a police officer or not, (e.g. disorderly conduct in a police station, section 77) and (iii) offences which can be committed only by members of the general public (e.g. unlawful possession of police equipment — section 76). The offence of desertion has been deliberately omitted from Part VII — Discipline.

Desertion, being an offence created by the new Ordinance, is clearly not a re-enacted provision for the purposes of section 12 of the Interpretation and General Clauses Ordinance, 1948. If the legislature intended that the offence of desertion should apply to special police officers, it would have been necessary to make express provision therefor in the Police Ordinance, 1952, or by the publication of additional regulations under the Essential Regulations Proclamation (Proc. No. 72). It appears that the intention of the legislature was that the offence of desertion should be confined to police officers as defined in the Police Ordinance, 1952.

I am satisfied that the charge as framed was one not known to the law and that the Court should have discharged the accused under section 173(g) of the Criminal Procedure Code, the charge being groundless.

The appeal is dismissed.

Appeal dismissed.

LEE HIN v. MOHAMED BIN ABUBAKAR

[C. A. (Thomson C.J. (F.M.), Whyatt C.J. (S) and Smith J.) July 21, 1957]

[J. B. — F.M. Civil Appeal No. 41 of 1956]

Contracts (Malay States) Ordinance, 1950, s. 74(1) — Breach of contract — Measure of damages — Whether expenditure was in contemplation of parties at time contract was made.

In this case the respondent who was the administrator of the estate of Dato Abubakar (decd.) entered into a written agreement with the appellant relating to the lease to the latter of a piece of land in Johore Bahru. At the time of the agreement the respondent had not extracted letters of administration to the estate and had not obtained the necessary leave of the Court but it was agreed that the lease should be granted when the necessary leave of the Court was obtained. It was also agreed that the appellant was to have vacant possession of the land from date of agreement and that he was to erect houses on the land. The respondent did not apply to Court for leave and the appellant therefore claimed damages for breach of contract. The appellant claimed *inter alia* compensation for expenditure incurred in building operations on the land.

Held: (Thomson C.J. and Smith J., Whyatt C.J. (S) dissenting): it was in the contemplation of the parties at the time the agreement was made that the appellant would begin building operations on the land and therefore the appellant was entitled to compensation for so much of the expenditure on the land as had been incurred by the appellant.

Cases referred to:—

(1) *Day v. Singleton* (1899) 2 Ch. 320.
(2) *Braybrooks v. Whaley* (1919) 1 K.B. 435.
(3) *Hanslip v. Padwick* 5 Ex. 615.
(4) *Hodges v. Earl of Litchfield* 1 Bing. (N.C.) 492.
(5) *Flureau v. Thornhill* 2 W. Bl. 1078.
(6) *Bain v. Fothergill* (1874) L.R. 7 H.L. 158.
(7) *Engel v. Fitch* (1868) L.R. 3 Q.B. 314; L.R. 4 Q.B. 659.
(8) *Ranchhod Bhawan v. Manmohandas Ramji* I.L.R. 32 Bom. 165.
(9) *Vyramuthu v. State of Selangor* 4 F.M.S.-L.R. 277.
(10) *Syed Ahmad Alhabshee v. Puteh binti Sabtu* 5 F.M.S.L.R. 243.
(11) *Lim Yew Soon & Anor. v. Gan Chye Neo* 2 F.M.S.L.R. 5.
(12) *Hadley v. Baxendale* (1854) 96 R.R. 742.
(13) *Daniel v. Vassall* (1917) 2 Ch. 45.
(14) *Worthington v. Warrington* 137 E.R. 459; 8 C.B. 134.
(15) *Godwin v. Francis* L.R. 5 C.P. 295.

COURT OF APPEAL.

Chong Thutt Pitt for the appellant.

Omar Salleh for the respondent.

Cur. Adv. Vult.

Thomson C.J. : — This appeal concerns the quantum of damages to which the appellant is entitled on account of an undoubted breach on the part of the respondent of a contract between the parties.

On 1st June, 1954 the respondent, who is the administrator of the estate of one Dato Abubakar bin Buang (deceased) entered into a written agreement with the appellant relating to a piece of land in the town of Johore Bahru forming part of the estate in question. At the time of the agreement, according to his own evidence, the respondent had already applied for and been granted letters of administration to the estate of the deceased, though it is common ground that the grant was not extracted until 11th July, 1954, some six weeks later.

The agreement is by no means clearly drafted, but it is not in dispute that in consideration of a sum of $375, which was in fact paid to him by the appellant, the respondent agreed to grant him a lease of the land for fifty years from the 1st June, 1954, when he had obtained the necessary leave of the Court under section